

**CALIFORNIA ENERGY COMMISSION**

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**STAFF ANALYSIS OF CALPINE CORPORATION S REQUEST  
TO EXTEND THE SEPTEMBER 30, 2001 ON-LINE DATE  
FOR THE CALPINE KING CITY LM 6000 PROJECT  
(01-EP-06C)**

## INTRODUCTION

Calpine is requesting that the Commission extend the on-line date for the Calpine King City LM 6000 Project (also known as the King City Energy Center) beyond the September 30, 2001 deadline specified in the Commission s Decision (01-EP-6). Calpine is requesting an extension to December 28, 2001.

The Calpine King City LM 6000 Project is a nominal 50 MW simple cycle, natural gas-fired power plant, located in the City of King, certified by the Commission on May 2, 2001. On June 7, 2001, Calpine filed a petition to relocate the project to an adjacent 8-acre parcel owned by the King City Redevelopment Agency. Calpine requested the change because they were unable to acquire the site at the original location. The Energy Commission approved the petition on June 25, 2001, authorizing use of the new site. Limited construction was initiated on July 21, 2001. To date, construction activities have been limited to site clearing, grading, and general site preparation.

Staff s analysis is based on the following requirement as specified in the Commission s Decision for the Calpine King City LM 6000 Project:

**Start of Operations:** The Calpine King City LM 6000 Project shall be on line by ***no later*** than September 30, 2001. If the Calpine King City LM 6000 Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the project owner failed to proceed with due diligence to have the Calpine King City LM 6000 Project in operation by September 30, 2001, the Applicant shall forfeit its certification.

Calpine does not believe that a formal amendment should be required for this proceeding, as all aspects of the project, other than the on-line date remain unchanged. Staff believes an amendment is required under Title 20, section

1769(a)(1) of the Siting Regulations because the failure to meet the September 30 2001 on-line date constitutes a modification to the project s operation or performance requirements. Namely, they will not be performing or operating on September 30, 2001.

## APPROACH

Staff s analysis will address whether or not Calpine proceeded with due diligence to meet the September 30, 2001 on-line date. Specifically, with regards to due diligence, staff will assess if Calpine engaged in a thorough, good faith effort to meet the on-line date. If staff concludes Calpine proceeded with due diligence, staff will recommend that Calpine s petition to amend the Decision to extend the September 30 deadline be approved. Staff will then address if sanctions are appropriate, and if so, the type and extent of sanctions will be recommended. If staff concludes Calpine failed to proceed with due diligence, staff will recommend that the amendment not be approved, and that Calpine forfeit the certification in accordance with the Decision.

## BACKGROUND AND TIMELINE

- June 6 and 7, 2001 — Staff confirmed with Calpine that a turbine for the King City LM 6000 Project was available to meet the September 30 deadline. (Telephone conversations between Christian Huntley, Compliance Project Manager, and Andy Remely, Calpine Project Manager).
- June 25, 2001 - The Commission authorized Calpine to relocate the Calpine King City LM 6000 Project to an adjacent parcel. Calpine explained to the Commission that the relocation was necessary to meet the September 30 deadline.
- July 10, 2001 — The City of King provided a letter to staff confirming sale of the property for the new site to Calpine. They also indicated that the grant deed for new site was dependent on receipt of a Quit Claim Deed from a party that previously had a right to acquire the site. The City of King continued to assure the staff that encumbrances on the title would be cleared in a timely fashion.
- July 18, 2001 - Calpine cleared all requirements (pre-construction submittals) to begin site mobilization and grading for the new site and received approval from staff to begin that work. The City of King also notified staff that Calpine was cleared to start construction.
- July 21, 2001 - Calpine initiated site clearing and grading. At this time Calpine indicated that they did not have complete site control, were

proceeding with limited construction until it was attained, and that site control was imminent.

- July 23, 2001 - Calpine informed staff they would not meet the September 30, 2001 deadline because they did not possess title to the new site, and that the new on-line date would be November 30, 2001.
- July 24, 2001 - Staff requested that Calpine file a petition to amend the Decision. Staff asked Calpine to include, to the extent appropriate, the amendment petition requirements in Section 1769 of the Commission's Regulations, the status of site control, a specified on-line date, a detailed construction schedule, and specific measures Calpine would implement to ensure the schedule is met.
- August 1, 2001 - Calpine submitted a letter to Commissioner Michal Moore notifying him that they were revising the September 30, 2001 on-line date to late November or early December 2001 due to site acquisition delays. Staff was not copied on the letter. Calpine's notification was directed by Commissioner Moore's office to the Energy Facility Siting Committee.
- August 1, 2001 — Staff first became aware of possible turbine procurement delays. (Telephone conversation between Christian Huntley and Brian McDonald, Calpine)
- August 9, 2001 — Calpine indicated to staff that the King City LM 6000 turbine had been redirected to another site due to delays in site acquisition. (Telephone conversation between Christian Huntley and Brian McDonald, Calpine). Calpine further indicated they would not have a turbine available until October 31, 2001.
- August 9, 2001 - The Energy Facility Siting Committee issued an order directing Calpine to file legal arguments and supporting documentation by August 16, 2001, justifying an extension of the on-line date of the King City LM 6000 project beyond the September 30, 2001 deadline (including responses to staff's July 24, 2001 request). The Committee directed staff to file an analysis of Calpine's arguments no later than 12:00 noon, August 21, 2001. The Committee also placed this item on the August 22, 2001 Business Meeting.
- August 14, 2001 — Staff instructed Calpine to address their decision to redirect the turbine, as well as the timing of that decision, in their August 16, 2001 filing, but no such explanation has been provided. (Telephone conversations and emails between Christian Huntley and Brian McDonald, Calpine, and Kathleen Campbell, consultant to Calpine. Hard copy letter mailed August 15, 2001).

- August 16, 2001 - Calpine filed legal arguments in support of extending the on-line date, and requested an on-line date of December 28, 2001.

#### ARGUMENTS FINDING CALPINE PROCEEDED WITH DUE DILIGENCE

Based on the information staff has to date, the following points suggest a finding that Calpine may have proceeded with due diligence in an attempt to meet the September 30 on-line deadline:

- After trying unsuccessfully to gain site control over the original site, Calpine approached the Commission for approval to relocate the site. At that time Calpine continued to commit to meet the September 30 deadline.
- Calpine coordinated with the City of King and the King City Redevelopment Agency to acquire the new site. Staff was given assurances from the City that title would be cleared in a timely fashion.
- Calpine continued to work with the City of King in overcoming any obstacles in securing the new site. The City filed a Quiet Title lawsuit against the party holding the option on the site on August 14, 2001. Calpine has stated that the party has now agreed to sign a Quit Claim Deed, and that they expect to obtain site control by August 22, 2001.
- Calpine initiated construction activities, at their risk and at a cost of over \$250,000, prior to clear title in order to help meet the September 30 deadline. However, Calpine would not risk to any permanent construction until clear title was provided by the City of King.

#### ARGUMENTS FINDING CALPINE FAILED TO PROCEED WITH DUE DILIGENCE

Based on the information staff has to date, the following points suggest a finding that Calpine may have failed to proceed with due diligence in an attempt to meet the September 30 on-line deadline:

- Calpine did not disclose a preliminary title report issued on May 31, 2001, showing certain exceptions and a third party option agreement to purchase the parcel (new site), at the June 25, 2001 Business Meeting. Therefore, when the Commission authorized site relocation on June 25, 2001, the Commission was not aware of specific issues regarding the new site that would ultimately compromise the September 30 deadline

- The City of King indicated that Calpine could proceed with the project on the new site as early as July 24, 2001. (Telephone conversation between Christian Huntley and Keith Breskin, City Manager)
- At some point over the last several months, Calpine decided to redirect the turbine they had allocated for the King City LM 6000 Project to another site. On August 14, 2001, staff asked Calpine to explain the details of this decision, including the timing, in their August 16, 2001 filing, but no such explanation has been provided (see Background and Timeline for referenced communications). This decision has contributed to a scheduled on-line date of at least three months beyond the September 30 deadline. Calpine's construction schedule provided in their August 16, 2001 filing refers to an October 31, 2001 shipping date for the turbine. This shipping date appears to be the determinative factor for the December 28 on-line date. If the turbine were available now, the on-line date could be significantly accelerated from December 28 on-line date.
- Calpine continues to modify projected on-line dates. Initially, when Calpine informed staff they would not make the deadline, they referenced an on-line date of November 30, 2001. In their letter to Commissioner Moore they reference late November or early December 2001. In their August 16, 2001 response to the Committee's Notice, they refer to an on-line date of December 28, 2001.
- Calpine is proposing a 7-10 s work schedule in their August 16 filing (seven days a week, ten hours a day). A 7-10 schedule is not extraordinary; many power plants under construction this summer were working 7-12 s, and even 7-24 in some cases.

## NEXT STEPS

Staff believes that Calpine should have the opportunity to review and respond to the points raised in this analysis, and any questions raised by the Commission at the August 22, 2001 Business Meeting. Therefore, staff will not make recommendations at this time, and will consider Calpine's response prior to presenting recommendations. Below are the potential consequences of either finding or not finding due diligence, depending of Calpine's ultimate response.

## POTENTIAL CONSEQUENCES

### Approve the Amendment Petition and Extend the Deadline

In the event that the Commission finds that Calpine s demonstrated due diligence in their effort to meet the September 30 deadline, the Commission could approve the amendment petition and order an extension of the on-line date.

If the Commission finds due diligence and orders an extension of the on-line date, it may issue sanctions. Sanctions can be issued for such violations as the delay itself, failure to disclose conditions affecting site acquisition, and the redirection of the turbine.

Sanctions should be in the form of a civil penalty. Public Resources Code section 25534 authorizes the Commission to impose civil penalties (fines) due to a significant failure to comply with one or more conditions of certification. The maximum civil penalty is specified at \$50,000 dollars per violation, and increased up to \$1,000 per day of each violation, up to a maximum of \$25,000 dollars, for a maximum penalty of \$75,000 dollars per violation.

### Forfeiture of Certification

In the event that the Commission finds the delay is due to lack of due diligence it can order that Calpine s certification be forfeited in accordance with the Decision.

If the Commission finds that Calpine did not proceed with due diligence, and consequently, the amendment petition is not approved, and the certification is forfeited, Calpine could choose one of three options: re-apply to the Commission for a four-month AFC, obtain a local permit by staying under the Commission s 50 MW jurisdictional threshold, or cancel the project. However, the first two options would result in an unnecessary permitting process with associated costs and personnel resources, delaying the on-line date even further (likely the spring of 2002 for a four month AFC). The third option would result in one less project that could help meet the expected energy demands of summer 2002.

The Governor declared a state of emergency on January 17, 2001, and issued several executive orders to alleviate an energy supply emergency. In this regard, the Governor ordered the Commission to expedite the processing of applications for peaking and renewable power plants. The energy emergency is projected to continue into the summers of 2002 and 2003. This project was permitted to not only be on-line for this summer (by September 30, 2001), but also 2002, 2003 and beyond.

The first four emergency permits Commission Decisions did not require forfeiture of the certificate if applicants missed the September 30 deadline. In those

decisions, the Commission set a specific date by which the facility must be brought on-line as a condition precedent to continue the certification.

Given these facts, the September 30 deadline may not be appropriate in this case. If the Commission does not approve Calpine's amendment to extend the deadline, the Commission could amend the Decision to eliminate forfeiture of certification due to lack of due diligence and extend the deadline, with sanctions.

Should the Commission choose to amend the provision regarding forfeiture even in the event of lack of due diligence, sanctions may be appropriate because Calpine failed to disclose the preliminary title report, and Calpine's redirection of the turbine.

The issue of fairness to other developers who either met, or will meet the September 30 deadline is also an element in support of sanctions. All ten of the other emergency projects approved by the Commission agreed to have their power plants operational by the September 30 deadline as a condition of their permit. The first four projects permitted in April 2001 (Larkspur, Indigo, Drews and Century) are or will be operational this month. Three projects (Hanford, Escondido and Border) are in construction and still expect to meet their September 30 deadlines. Calpine Gilroy is scheduled to have two of three turbines on-line by the September 30 deadline, and the third turbine is expected to come on line by November 16, 2001. Pegasus has initiated limited construction (grading, excavation), does not have a power purchase agreement from the California Department of Water Resources, and is trying to negotiate the sale of the project to the new California Power Authority. Ramco Chula Vista was terminated prior to construction due to market conditions. Emergency projects that have or will successfully meet the September 30 deadline did so at significant expense and effort.

Dated: August 21, 2001

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